

CONSULTANT CONTRACT

This Contract is by and between the **City of College Station**, a Texas Municipal Home-Rule Corporation (the "City") and **Mercer Group, Inc.**, a Georgia Corporation (the "Contractor"), whereby Contractor agrees to perform and the City agrees to pay for the work described herein.

ARTICLE I

1.01 This Contract is for professional executive recruiting services (the "Project"). The scope and details of the work to be provided to the City by Contractor are set forth in **Exhibit "A"** to this Contract and are incorporated as though fully set forth herein by reference. Contractor agrees to perform or cause the performance of all the work described in **Exhibit "A."**

1.02 Contractor agrees to perform the work described in **Exhibit "A"** hereto and the City agrees to pay Contractor a fee based on the rates set forth in **Exhibit "B"** to this Contract for the services performed by Contractor. The invoices shall be submitted to the City following the 15th day and the last day of each month. The payment terms are net payable within thirty (30) calendar days of the City's receipt of the invoice. Upon termination of this Contract, payments under this paragraph shall cease, provided, however, that Contractor shall be entitled to payments for work performed in accordance with this Contract before the date of termination and for which Contractor has not yet been paid.

1.03 The total amount of payment, including reimbursements, by the City to Contractor for all services to be performed under this Contract may not, under any circumstances, exceed **Twenty Five Thousand Five Hundred and no/100 dollars (\$25,500.00)**.

1.04 The City may from time to time request changes in the scope and focus of the activities, investigations, and studies conducted or to be conducted by Contractor pursuant to this Contract, provided, however, that any such change that in the opinion of Contractor, the City Council, or the City's Project Manager varies significantly from the scope of the work set out herein and would entail an increase in cost or expense to the City shall be mutually agreed upon in advance in writing by Contractor and the City Council. **Any request by the Contractor for an increase in the Scope of Services and an increase in the amount listed in paragraph 1.03 of this Contract shall be made and approved by the City Council prior to the Contractor providing such services or the right to payment for such additional services shall be waived.**

1.05 Except as provided in Article VI hereinbelow, the Contractor shall complete all of the work described in Exhibit "A" by the dates set forth below.

March 31, 2006

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1.06 **Time is of the essence of this Contract.** The Contractor shall be prepared to provide the professional services in the most expedient and efficient manner possible in order to complete the work by the times specified.

1.07 At any time, the City may terminate the Project for convenience, in writing. At such time, the City shall notify Contractor, in writing, who shall cease work immediately. Contractor shall be compensated for the services performed. In the event that the City terminates this Contract for convenience, the City shall pay Contractor for the services performed and expenses incurred prior to the date of termination.

1.08 Contractor promises to work closely with the Interim City Manager or his designee (the "Project Manager") or other appropriate City officials. Contractor agrees to perform any and all Project-related tasks reasonably required of it by the City in order to fulfill the purposes of the work to be performed. The work of Contractor under this Contract may be authorized by the Project Manager in various phases as set forth in **Exhibit "A."**

1.09 In all activities or services performed hereunder, the Contractor is an independent contractor and not an agent or employee of the City. The Contractor, as an independent contractor, shall be responsible for the final product contemplated under this Agreement. Except for materials furnished by the City, the Contractor shall supply all materials, equipment and labor required for the execution of the work on the Project. The Contractor shall have ultimate control over the execution of the work under this Contract. The Contractor shall have the sole obligation to employ, direct, control, supervise, manage, discharge, and compensate all of its employees and subcontractors, and the City shall have no control of or supervision over the employees of the Contractor or any of the Contractor's subcontractors except to the limited extent provided for in this Contract. Contractor shall be liable for any misrepresentations. Any negotiations by the Contractor on the City's behalf are binding on the City only when within the scope of work contained herein and approved by the City.

ARTICLE II

2.01 The City shall direct Contractor to commence work on the Project by sending Contractor a "letter of authorization" to begin work on the Project.

2.02 Upon receipt of the letter of authorization to begin work on the implementation of the Project, Contractor shall meet with the City for the purpose of determining the nature of the Project, including but not limited to the following: meeting with the City to coordinate Project goals, schedules, and deadlines; coordinating data collection; briefing the City's management staff; documenting study assumptions and methodologies; devising the format for any interim reports and the final report to the City.

2.03 Contractor shall consult with the City and may, in some limited circumstances, act as the City's representative, but it is understood and agreed by the parties that for all purposes related to this Contract, Contractor shall be an independent contractor at all times and is not to be considered either an agent or an employee of the City.

ARTICLE III

3.01 As an experienced and qualified professional, Contractor warrants that the information provided by Contractor reflects high professional and industry standards, procedures, and performances. Contractor warrants the design, preparation of drawings, the designation or selection of materials and equipment, the selection and supervision of personnel, the fitness and operation of its recommendations, and the performance of other services under this Contract, pursuant to a high standard of performance in the profession. Contractor warrants that it will exercise diligence and due care and perform in a good and workmanlike manner all of the services pursuant to this Contract. Approval or acceptance by the City of any of Contractor's work product under this Contract shall not constitute, or be deemed, a release of the responsibility and liability of Contractor, its employees, agents, or associates for the exercise of skill and diligence necessary to fulfill Contractor's responsibilities under this Contract. Nor shall the City's approval or acceptance be deemed to be the assumption of responsibility by the City for any defect or error in the Project's work products prepared by Contractor, its employees, associates, agents, or subcontractors.

3.02 Contractor shall keep the City informed of the progress of the work and shall guard against any defects or deficiencies in its work.

3.03 Contractor shall be responsible for using due diligence to correct errors, deficiencies or unacceptable work product. Contractor shall, at no cost to the City, remedy any errors, deficiencies or any work product found unacceptable, in the City's sole discretion, as soon as possible, but no longer than fifteen (15) calendar days after receiving notice of said errors, deficiencies or unacceptable work product.

3.04 Contractor's work product shall be the exclusive property of the City. Upon completion or termination of this Contract, Contractor shall promptly deliver to the City all records, notes, data, memorandum, models, and equipment of any nature that are within Contractor's possession or control and that are the City's property or relate to the City or its business.

ARTICLE IV

4.01 Indemnification. Contractor agrees to and shall indemnify and hold harmless and defend the City, its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits and liability of every kind, including all

expenses of litigation, court costs, and attorney's fees, for injury to or death of any person, for damage to any property, or for any breach of contract, arising out of, or in connection with the work done by Contractor under this Contract. In the event of personal injury to or death of Contractor' employees, such indemnity shall apply regardless of whether the claims, losses, damages, causes of action, suits or liability arise in whole or in part from the negligence of the City. Such indemnity shall not apply, however, to liability arising from the personal injury, death, or property damage of persons other than the Contractor or its employees where such liability is caused by or results from the negligence of the City.

4.02 Contractor assumes full responsibility for the work to be performed hereunder and hereby releases, relinquishes, and discharges the City, its officers, agents, and employees from all claims, demands, and causes of action of every kind and character, including the cost of defense thereof, for any injury to or death of any person (whether employees of either of the parties hereto or other third parties) and any loss of or damage to property (whether property of either of the parties, their employees, or other third parties) that is caused by or alleged to be caused by, arising out of, or in connection with Contractor's work to be performed hereunder. This release shall apply regardless of whether said claims, demands, and causes of action are covered, in whole or in part, by insurance and regardless of whether such loss, damage, injury, or death was caused in whole or in part by the negligence of the City.

ARTICLE V

Insurance

5.00 The Contractor shall procure and maintain at its sole cost and expense for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, volunteers, employees or subcontractors. The policies, limits and endorsements required are as set forth in **Exhibit "C"**.

ARTICLE VI

6.01 At any time, the City may terminate the Project for convenience, in writing. At such time, the City shall notify Contractor, in writing, who shall cease work immediately. Contractor shall be compensated for the services performed. In the event that the City terminates this Contract for convenience, the City shall pay Contractor for the services performed and expenses incurred prior to the date of termination.

6.02 No term or provision of this Contract shall be construed to relieve the Contractor of liability to the City for damages sustained by the City or because of any breach of contract by the Contractor. The City may withhold payments to the Contractor for the purpose of setoff until the exact amount of damages due the City from the Contractor is determined and paid.

ARTICLE VII

7.01 This Contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Brazos County, Texas.

7.02 Notices shall be mailed to the addresses designated herein or as may be designated in writing by the parties from time to time and shall be deemed received when sent postage prepaid U.S. Mail to the following addresses:

City:
City of College Station
Attn: Julie O'Connell
P.O. Box 9960
College Station, Texas 77842

Contractor:
Mercer Group, Inc.
Attn: James L. Mercer, President
551 Cordova Road #726
Santa Fe, NM 87505

7.03. Contractor, its employees, associates or subcontractors shall perform all the work hereunder. Contractor agrees that all of its associates, employees, or subcontractors who work on this Project shall be fully qualified and competent to do the work described hereunder. Contractor shall undertake the work and complete it in a timely manner.

7.04 The Contractor shall comply with all applicable federal, state, and local statutes, regulations, ordinances, and other laws, including but not limited to the Immigration Reform and Control Act (IRCA). The Contractor may not knowingly obtain the labor or services of an unauthorized alien. The Contractor, not the City, must verify eligibility for employment as required by IRCA.

7.05 No waiver by either party hereto of any term or condition of this Contract shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

7.06 This Contract and all rights and obligations contained herein may not be assigned by Contractor without the prior written approval of the City.

7.07 If any provision of this Contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of competent jurisdiction finds that any provision of this Contract is invalid or unenforceable, but


that by limiting such provision it may become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

7.08 This Contract represents the entire and integrated agreement between the City and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may only be amended by written instrument approved and executed by the parties.

7.09 The parties acknowledge that they have read, understood, and intend to be bound by the terms and conditions of this Contract.

7.10 This Contract will be effective when signed by the last party whose signing makes the Contract fully executed.

MERCER GROUP, INC.

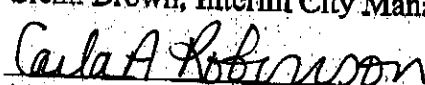
By: 
 Printed Name: James L. Mercer
 Title: President
 Date: 10-6-05

ATTEST:

Connie Hooks, City Secretary

APPROVED:

Glen Brown, Interim City Manager


 City Attorney

Jeff Kersten,
 Finance & Strategic Planning Director

CITY OF COLLEGE STATION

By: _____
 Ron Silvia, Mayor
 Date: _____

Date

Date

Date

Date

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Exhibit "A"

Scope of Services

SCOPE OF SERVICES

The following information presents the understanding of the requirements for this recruitment, as well as the objectives and scope of the project.

A. Introduction and Background

It is our understanding that:

- The City of College Station is seeking executive recruitment services and support in connection with the recruitment of a new City Manager.
- The City of College Station is interested in identifying outstanding candidates and filling the position of City Manager.
- Services required include position analysis and preparation of position profiles and position description for recruitment for the position; review of the current compensation and assistance in establishing compensation guidelines; inviting potential candidates to apply; reviewing and screening applications; conducting preliminary interviews and background checks of selected candidates; recommending a list of final candidates; developing appropriate interview questions; on site coordination of final interviews; negotiating; and following up.
- The City of College Station wishes to conduct a comprehensive national recruitment process, to ensure the best qualified candidates are found and that the best qualified individuals who are acceptable can be hired.
- The annual salary and benefits package for the position will be discussed with the City Officials.

B. Objectives

The objectives that will be met in order to help find the best qualified candidates for the position are as follows:

- To conduct on-site needs assessment for the new City Manager.
- To develop a comprehensive position profile.

- To reconcile any differences in points of view with regard to specifications for the position.
- To encourage top level people to apply who would otherwise be reluctant to respond, through the use of a comprehensive advertising program.
- To save a considerable amount of the City Official's and staff's time in establishing a position profile and reviewing applicants.
- To comply with appropriate personnel regulations and state laws (i.e., EEO, Affirmative Action and ADA).
- To independently and objectively assess the qualifications and suitability of candidates for the position.
- To recommend a pool of finalist candidates to the City Officials.
- To coordinate finalist candidate interviews with the City Officials.
- To mail an information packet supplied by the City Officials to all qualified applicants.
- To respond to all candidate inquiries and produce all correspondence throughout the recruitment.
- To preserve the confidentiality of inquiries to the degree possible under Texas law.
- To assist the City Officials in reaching a final decision.
- To assist in negotiating a compensation package with the successful candidate on behalf of the City Officials.
- To assist the City Officials in establishing criteria for evaluating the new City Manager's performance.
- To follow-up with the City Officials and the new City Manager during the first year to determine if adjustments need to be made.

- To keep the City Officials closely involved in key decisions and informed of our progress.

C. Scope

The scope of the project will be sufficiently broad and in-depth so as to meet the requirements of the City of College Station. However, for the fee proposed it will not address recruitment of additional candidates for positions other than the one specified.

APPROACH and WORK PLAN

A. Position Analysis

Mercer will have extensive consultation with the City Officials, other City staff and local leaders (i.e. civic, business and neighborhood association) selected by them, as well as other individuals (i.e. newspaper editorial staff) or groups (i.e. employee groups) to determine the City's vision/mission, goals and objectives, the needs and issues, requirements of the job, and to obtain information about the environment within which the position functions. In addition, Mercer will spend a considerable amount of time at the beginning of the process in the City of College Station in order to determine the level of experience and training needed.

During this process, Mercer will initiate individual interviews with the City Officials, citizen organizations, department heads and key staff, and others of City's choice to identify expectations, perceptions, and concerns regarding the position.

Based on those meetings, Mercer will prepare a draft position profile and review it with the City Officials in order to arrive at a general agreement regarding the specifications for the position. The final position profile will include information about the City of College Station, the community, major issues to be faced, the position, and the selection criteria established.

B. Recruitment Process

Because Mercer has recently completed similar recruitments, Mercer will first review our database to determine those candidates whom we may already know and/or already have on file who may meet the City of College Station's specifications.

Although this process is valuable, Mercer will rely most heavily on their contacts in the City Management field and on their own experience. In other words, through "networking", Mercer will conduct a nation-wide professional recruitment for the best qualified candidates and invite them to apply for the position.

Mercer will provide the City Officials with several advertising alternatives with varying degrees of cost and their associated benefits. Based on discussions with the City Officials, Mercer will place ads in professional journals, in national, in-state and local newspapers, and in various minority and women's publications to encourage applicants to apply.

C. Resume Review

Mercer will review and analyze each applicant's background and experience against the position description criteria.

Mercer will acknowledge all resumes received and keep candidates informed of their status.

D. Candidate Screening

Criteria for the preliminary screening will be contained in the approved "Recruitment Profile". They may include such items as education, technical knowledge, experience, accomplishments, management style, personal traits, etc. Screening of candidates against those criteria will be based on data contained in the resumes and other data provided by the candidates and on Mercer's knowledge of the organizations in which they work. At this stage, each must meet the minimum qualifications specified in the Recruitment Profile.

Mercer will be responsible for screening the applications received. This initial screening will be conducted by telephone with both the prospective candidate and with references who may know the candidate's background and expertise.

Once the initial screening is completed, Mercer will select the prospective candidates who most closely match the criteria established by the City Officials. The output of this step in the process will be a written report of the top candidates discussing how each rates against the selection criteria established by the City Officials. This report will be reviewed with the City Officials in one-on-one meetings and guidance obtained prior to proceeding. One contingency here is that the City Officials may not approve of any of the candidates. If that should occur, Mercer would, of course, keep recruiting until the City of College Station's needs are clearly met.

After review by the City Officials, Mercer will personally interview each using various interview techniques. Mercer will closely examine their experience, qualifications and achievements in view of the selection criteria and our professional expertise in evaluating the quality of such qualifications and achievements. The City may choose to interview candidates utilizing video conferencing during this screening phase.

Mercer also requests that all candidates provide, in writing, substantial information about their accomplishments and their management style and philosophy. This information will be verified and, at the City Officials' option, may be further tested by having the finalists' complete management and leadership style inventories. Mercer will interpret these instruments for the City Officials, as well.

E. Background Investigations

As part of the process in evaluating top candidates, Mercer will make detailed and extensive reference checks. In conducting these, it is Mercer's practice to speak directly to individuals who are now or have previously been in a position to evaluate the candidates' job performance.

Mercer will ask each candidate to provide a large number of references. Mercer then will network these references to other persons who know the candidate. In this way, each candidate is thoroughly evaluated. Mercer has talked to as many as 23 references concerning a single finalist candidate. These references and evaluations are combined to provide frank and objective appraisals of the top candidates. Mercer will also verify past employment difficulties, if any, including any legal action filed against former employers.

As part of the evaluation process, Mercer will verify undergraduate and graduate college degrees. Mercer will arrange for credit checks, criminal checks, and, as an additional option, can arrange for psychological (or similar) testing of the candidates that may be desired. **(These may be extra cost items.)** Mercer will recommend background investigation criteria to the City Officials who will make the final decision on the specifics of the background check(s).

F. Interview Process

Based on the preceding steps, a recommended list of finalists for the position of City Manager will be compiled. Mercer will prepare a written summary on each finalist. The information will cover, but not be limited to, 1) present position, 2) total years experience, 3) salary requirements, 4) education, 5) previous positions held, 6) notable

projects, 7) management style, 8) skills and abilities, 9) interests, and 10) professional goals. This information will be presented to the City Officials in a detailed written format combined with the results of the background investigation and candidate screening. Mercer will make a recommendation on a group of five (5) to seven (7) finalists. The City Officials shall make the final decision on which and how many candidates will be interviewed.

A report will be presented in a meeting with the City Officials in which Mercer will discuss the recommendations and provide background information, sample questions and a rating form for the interviews. Mercer can also assist the City Officials at no extra charge in conducting targeted selection and/or simulation processes with finalists, if desired.

In particular, Mercer will explain which, if any, of the applicants specifically meet the total criteria established by the City Officials or whether the final group simply represents the best available talent.

Mercer will also provide the City Officials with recommendations relative to timing, sequencing, location, setting, format, and conduct of interviews with the finalists. Mercer will provide information about trends in employment, employment contracts and agreements, relocation expenses, perquisites, appropriate role for spouses, receptions, etc. Mercer will arrange schedules for top candidate interviews with the City Officials and will coordinate the process.

G. Negotiation and Follow-up

Mercer will also assist in the negotiation process relative to salary, benefits and other conditions of employment. This can be especially helpful because Mercer has proposed a fixed fee rather than one based on a percentage of salary. One contingency here is that an agreement may not be able to be arranged. If that is the case, Mercer will work with the City Officials to select an alternate candidate.

Mercer will properly handle any and all media relations. Unless otherwise directed, it is standard practice to tell all media that Mercer is working on behalf of the City Officials and that any public statement should come directly from the City Officials. Mercer will maintain confidentiality of candidate information, to the degree possible, under Texas law.

Finally, Mercer will notify by letter all unsuccessful candidates who were not recommended for interview with the City Officials. It is suggested, however, that it is more

proper for the City Officials to directly notify all unsuccessful finalist candidates who were interviewed of the final result.

Once the new City Manager has been on board for 30 days or so, Mercer will conduct a session with the City Officials and with the new City Manager in order to establish mutual performance criteria and goals for the position. In this regard, Mercer will work with the City Officials to define the role of the new City Manager within the City of College Station.

Mercer will follow-up periodically with the City Officials and the new City Manager during the first year in order to make any adjustments that may be necessary.

Mercer will keep the City Officials closely informed and involved in decisions concerning the recruitment process at all times. Mercer will prepare and send to the City Officials two reports each month. These reports will contain a progress report on the recruitment and specific steps to be taken to meet the City Officials' deadlines and an itemization of expenses incurred-to-date and expected to be incurred during each succeeding project step.

H. Guarantees

The Mercer Group offers ten (10) guarantees of the search work as explained below:

1. Client Organization

The client is defined as the entire City, including all departments, divisions, sections and groups. This assures that all guarantees apply to the entire client organization.

2. Two-Year Off Limits

Mercer will not recruit candidates from a client organization for two years after placement of a search assignment without the full agreement of the client.

3. Placement Off Limits Forever

Mercer will never recruit a candidate who has been placed in a client organization as long as he/she is employed by that organization without the full agreement of the client.

4. Continue the Search

If, for any reason, the client does not feel comfortable selecting a candidate from the original recommended group of candidates, Mercer will continue the search until the client can make a selection. The only caveat is that Mercer may need to charge additional out-of-pocket expenses only for this additional work.

5. Replacement of Successful Candidate

If the candidate placed with the client leaves the client organization for any reason during the 24 month period following the date of placement with the client, Mercer will replace the candidate for the out-of-pocket expenses only that it costs to make the new placement.

6. Parallel Candidate Presentation

Mercer will not present a candidate simultaneously to more than one client. This permits the firm to represent one client organization without any conflicts of interest.

7. Client Conflicts

If asked, Mercer will disclose to their clients the names of the organizations which are "Off Limits" that logically would be target organizations on the new search assignment.

8. Deceptive/Misleading Search Techniques

Mercer commits to their clients and to their prospective candidates that they will not use any search techniques which may be considered as deceptive or misleading.

9. Resume Floating

Mercer will not float resumes to organizations in the hopes of collecting a fee if that individual is hired.

10. Not Represent Individuals

Mercer assures their clients and individuals who may become candidates that they will not collect a fee from candidates who may be recommended for a position.

Exhibit "B"

Payment Terms

Compensation is based on a fixed fee for professional services in the amount of \$16,500. In addition, the City will reimburse for actual and documented expenses not-to-exceed \$8,000.00. The City will also pay for actual administrative support time at the rate of \$20.00 per hour with a not-to-exceed amount of \$1,000.00

The Contractor may invoice for professional fees as follows:

- 1/3 or \$5,500.00 at start of recruitment
- 1/3 or \$5,500.00 at the end of 30 days
- 1/3 or \$5,500.00 upon delivery of the Final Report

The Contractor must submit *monthly* invoices to the City for reimbursable expenses, accompanied by an explanation of charges and expenses. The City will pay such invoices according to its normal payment procedures. Actual and documented (reimbursable) expenses include consultant travel, lodging, meals, telephone, correspondence, advertising, postage, delivery services, mileage, tolls, parking, mailing lists, brochure development and printing, office supplies and report preparation and printing.

Exhibit "C"

**Insurance Requirements and
Certificate(s) of Insurance**

Insurance Requirements

1. The Contractor agrees to maintain the types and amounts of insurance required in this Contract throughout the term of the Contract. The following insurance policies shall be required:

- (a) Commercial General Liability
- (b) Business Automobile Liability
- (c) Workers' Compensation
- (d) Professional Liability

2. For each of these policies, the Contractor's insurance coverage shall be primary insurance with respect to the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers, shall be considered in excess of the Contractor's insurance and shall not contribute to it. Certificates of insurance and endorsements shall be furnished to and approved by the City's Risk Manager *before* any letter of authorization to commence planning will issue or any work on the Project commences. No term or provision of the indemnification provided by the Contractor to the City pursuant to this Contract shall be construed or interpreted as limiting or otherwise affecting the terms of the insurance coverage. **All Certificates of Insurance and endorsements shall be furnished to the City's Representative at the time of execution of this Agreement, attached hereto as Exhibit "D", and approved by the City *before* work commences.**

3. The Contractor shall include all subcontractors as additional insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4. General Requirements Applicable to All Policies.

- (a) Only insurance carriers licensed and admitted to do business in the State of Texas will be accepted.
- (b) Deductibles shall be listed on the certificate of insurance and are acceptable only on a "per occurrence" basis for property damage only.
- (c) "Claims made" policies will not be accepted, except for Professional Liability insurance.
- (d) Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) calendar days prior written notice has been given to the City of College Station by certified mail, return receipt requested.

- (e) Upon request, certified copies of all insurance policies shall be furnished to the City.
- (f) The certificates of insurance shall be prepared and executed by the insurance company or its authorized agent. Each certificate shall contain the following provisions and warranties: (a) that the insurance company is licensed and admitted to do business in the State of Texas; (b) that the insurance policy is underwritten on forms provided by the Texas State Board of Insurance or ISO; (c) all endorsements and coverages according to the requirements of this Contract; (d) the form of notice of cancellation, termination, or change in coverage provisions; and (e) original endorsements affecting coverage required by this Contract.
- (g) The City of College Station, its officials, employees, and volunteers are to be added as "Additional Insureds" to the Commercial General Liability and Business Automobile Liability Policies. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, and volunteers.

5. **Commercial (General) Liability** requirements:

- (a) Coverage shall be written by a carrier with an "B+:VII" or better rating in accordance with the current Best Key Rating Guide.
- (b) Minimum Combined Single Limit of \$1,000,000 per occurrence per project for bodily injury and property damage with a \$2,000,000 annual aggregate limit.
- (c) Coverage shall be at least as broad as Insurance Service's Office Number CG 00 01.
- (d) No coverage shall be deleted from the standard policy without notification of individual exclusions being attached for review and acceptance.
- (e) The coverage shall include but not be limited to: premises/operations; independent contracts, products/completed operations, contractual liability (insuring the indemnity provided herein), and where exposures exist, "Explosion Collapse and Underground" coverage.
- (f) The City shall be named as an additional insured and the policy shall be endorsed to waive subrogation and to be primary and non contributory.

6. **Business Automobile Liability** requirements:

- (a) Coverage shall be written by a carrier with an "B+:VII" or better rating in accordance with the current Best Key Rating Guide.
- (b) Minimum Combined Single Limit of \$1,000,000 per occurrence for bodily injury and property damage.

- (c) The Business Auto Policy must show Symbol 1 in the Covered Autos portion of the liability section in Item 2 of the declarations page.
- (d) The coverage shall include owned, leased or rented autos, non-owned autos, any autos and hired autos.

7. **Workers' Compensation Insurance requirements:**

- (a) **Pursuant to the requirements set forth in Title 28, Section 110.110 of the Texas Administrative Code, *all* employees of the Contractor, the Contractor, *all* employees of any and all subcontractors, and all other persons providing services on the Project must be covered by a workers' compensation insurance policy: either directly through their employer's policy (the Contractor's, or subcontractor's policy) or through an executed coverage agreement on an approved TWCC form. Accordingly, if a subcontractor does not have his or her own policy and a coverage agreement is used, Contractors and subcontractors *must* use that portion of the form whereby the hiring contractor agrees to provide coverage to the employees of the subcontractor. The portion of the form that would otherwise allow them not to provide coverage for the employees of an independent contractor may not be used.**
- (b) The worker's compensation insurance shall include the following terms:
 - (i) Employer's Liability limits of \$1,000,000 for each accident is required.
 - (ii) "Texas Waiver of Our Right to Recover From Others Endorsement, WC 42 03 04" shall be included in this policy.
 - (iii) Texas must appear in Item 3A of the Worker's Compensation coverage or Item 3C must contain the following: All States except those listed in Item 3A and the States of NV, ND, OH, WA, WV, and WY.
- (c) Pursuant to the explicit terms of Title 28, Section 110.110(c)(7) of the Texas Administrative Code, this Agreement, the bid specifications, this Agreement, and all subcontracts on this Project must include the terms and conditions set forth below, without any additional words or changes, except those required to accommodate the specific document in which they are contained or to impose stricter standards of documentation:

A. Definitions:

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Workers' Compensation Commission, or a coverage agreement (TWCC-81, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractors" in § 406.096 [of the Texas Labor Code]) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service(s) related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

B. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.

C. The Contractor must provide a certificate of coverage to the governmental entity **prior** to being awarded the contract.

D. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

E. The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

(1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(2) no later than seven calendar days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

G. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the Contractor knew or should have known, or any change that materially affects the provision of coverage of any person providing services on the project.

H. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

I. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:

(1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, that meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

(2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

(3) *provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;*

(4) *obtain from each other person with whom it contracts, and provide to the Contractor:*

(a) *a certificate of coverage, prior to the other person beginning work on the project; and*

(b) *a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;*

(5) *retain all required certificates of coverage on file for the duration of the project and for one year thereafter;*

(6) *notify the governmental entity in writing by certified mail or personal delivery, within 10 calendar days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and*

(7) *contractually require each person with whom it contracts, to perform as required by paragraphs (a) - (g), with the certificates of coverage to be provided to the person for whom they are providing services.*

J. By signing this contract, or providing, or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to

administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor that entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten calendar days after receipt of notice of breach from the governmental entity.

8. Professional Liability requirements:

- (a) Coverage shall be written by a carrier with a "B+:VII" or better rating in accordance with the current Best Key Rating Guide.
- (b) Minimum of \$1,000,000 per occurrence and \$2,000,000 aggregate, with a maximum deductible of \$10,000.00.
- (c) Coverage must have an **Extended Reporting Period Endorsement** to be maintained for two (2) years after the expiration of the term or termination of this Contract.

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)

9/26/05

PRODUCER

Daniels Ins. Santa Fe
P.O. Box 4550
Santa Fe, NM 87502
(505) 982-4302

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE**COMPANY**

A National Fire Ins.Co. Hartford

COMPANY

B

COMPANY

C

COMPANY

D

INSURED

The Mercer Group, Inc.
551 W. Cordova Rd. #726
Santa Fe, NM 87505-1825

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT	2072208740	2/07/05	2/07/06	GENERAL AGGREGATE \$ 2,000,000 PRODUCTS-COMP/OP AGG \$ 2,000,000 PERSONAL & ADV INJURY \$ 1,000,000 EACH OCCURRENCE \$ 1,000,000 FIRE DAMAGE (Any one fire) \$ 100,000 MED EXP (Any one person) \$ 10,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	2072208740	2/07/05	2/07/06	COMBINED SINGLE LIMIT \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EACH ACCIDENT \$ AGGREGATE \$
	EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY THE PROPRIETOR/ PARTNERS/EXECUTIVE OFFICERS ARE: <input type="checkbox"/> INCL <input type="checkbox"/> EXCL				WC STATU- TORY LIMITS <input type="checkbox"/> OTH- ER <input type="checkbox"/> EL EACH ACCIDENT \$ EL DISEASE-POLICY LIMIT \$ EL DISEASE-EA EMPLOYEE \$
	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

All operations of the Insured per policy conditions. Liability: Continental U.S. Certificate Holder is listed as Additional Insured in regards to General Liability. Waiver of Subrogation in favor of certificate holder to be primary & non contributory.

CERTIFICATE HOLDER

City of College Station
Cheryl K. Turney, CPM
Purchasing Manager
P.O. Box 9950
1101 Texas Avenue
College Station, TX 77842

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

James H. Koch
JAMES H. KOCH
© ACORD CORPORATION 1988

CERTIFICATE: 013/001/ 00013

ACORD CERTIFICATE OF LIABILITY INSURANCE		OP ID CC MERCG-1	DATE (MM/DD/YYYY) 09/26/05
PRODUCER MIMS INTERNATIONAL, LTD. 901 DULANEY VALLEY RD # 610 TOWSON MD 21204 Phone: 410-296-1500 Fax: 410-296-1741		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED THE MERCER GROUP, INC. 5579B Chamblee Dunwoody Road #511 Atlanta GA 30338		INSURERS AFFORDING COVERAGE INSURER A: PHILADELPHIA INSURANCE CO. INSURER B: INSURER C: INSURER D: INSURER E:	NAIC # 18058

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	ADD'L	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
		GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY EA ACC \$ AGG \$
		EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				<input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A		PROFESSIONAL ERRORS & OMISSIONS	PHSD122496	02/06/05	02/06/06	LIMIT DEDUCTIBLE \$2000,000 \$5,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
Limit is Per Claim & Annual Aggregate
Policy includes a Bilateral Extended Reporting Period clause

CERTIFICATE HOLDER

CITY OF COLLEGE STATION Attn: C K Turney, Purch Mgr P O Box 9960 1101 Texas Avenue College Station TX 77842	CITYC06
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CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.	AUTHORIZED REPRESENTATIVE
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The Mercer Group, Inc.

Consultants To Management

551 W. Cordova Road, #726

Santa Fe, New Mexico 87505

(505) 466-9500

FAX (505) 466-1274

E-mail: mercerc@minudspring.com

September 23, 2005

VIA FAX TO 979.764.3899

Cheryl K. Turney, CPM
Purchasing Manager
City of College Station
PO Box 9960
1101 Texas Avenue
College Station, TX 77842

RE: Worker's Compensation Insurance

Dear Ms. Turney:

We have requested that Certificates be sent to you showing our insurance coverage for General Liability, Professional Liability and Comprehensive Automobile Liability.

With regard to Worker's Compensation Insurance, The Mercer Group, Inc. is a Georgia corporation. The Georgia Department of Revenue has informed us that we do not have the requisite number of employees to require that we carry Worker's Compensation Insurance. For this reason, we have not requested any certificate showing Worker's Compensation coverage to be forwarded to you.

If you have any questions, please call Jim at 505-466-9500.

Thank you for your attention to this matter.

Sincerely,

THE MERCER GROUP, INC.

Karolyn Prince-Mercer
Vice President

ATLANTA • BRECKENRIDGE • DALLAS • GREELEY • LANSING • MARIETTA
NEW ORLEANS • PHOENIX • RALEIGH AREA • SANTA FE • SCOTTSDALE
SACRAMENTO AREA • WINTER HAVEN

www.mercergroupinc.com